

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0585UT

**Sales Tax
For Years 1995-1997**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Use Tax – Liability of taxpayer for use tax on skid loader.

Authority: Ind. Code § 6-2.5-2-1
Ind. Code § 6-2.5-3-2
Ind. Code § 6-2.5-5-3
Ind. Admin. Code tit. 45, r. 2.2-5-8
Indiana Department of Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983)

The taxpayer protests the assessment of use tax on the purchase of a skid loader.

II. Use Tax – Liability of taxpayer for use tax on rolls of stencil material.

Authority: Ind. Code § 6-2.5-3-1
Ind. Code § 6-2.5-3-2
Ind. Code § 6-2.5-5-3
Indianapolis Fruit Co. v. Department of State Revenue, 691 N.E.2d 1379 (Ind. Tax Ct. 1998).

The taxpayer protests the assessment of use tax on the purchases of stencils used for engraving.

STATEMENT OF FACTS

The taxpayer manufactures and installs concrete burial vaults in Indiana. The taxpayer purchased a skid loader (also called an end loader) in 1997. The skid loader is used solely for the purpose of picking up sand and gravel and dumping it into the taxpayer's cement mixer. The cement is then poured into molds to produce the concrete burial vaults. No sales or use tax was

paid on the purchase of the skid loader. The taxpayer also sells stone monuments upon which it engraves appropriate information for its customers. The taxpayer purchases the stone from different suppliers. In the process of engraving information on the monuments, rubber stencils are placed over the stone and the engraving is accomplished by sandblasting. The taxpayer purchased rolls of stencil material in 1995 and 1996 and paid no sales or use tax on those purchases.

A sales and use tax audit was completed on July 30, 1998, covering the years 1995, 1996, and 1997. The taxpayer filed a timely protest letter challenging the auditor's assessment of use tax on the purchase of the skid loader and the purchases of the rolls of stencil material.

I. Use Tax – Liability of taxpayer for use tax on skid loader.

DISCUSSION

The taxpayer maintains that its purchase of a skid loader should be exempt from sales or use tax because it is used in the process of making cement that is used by the taxpayer to manufacture burial vaults. The skid loader is used only to pick up sand and gravel and dump it into the taxpayer's cement mixer. The State of Indiana imposes a sales tax on retail transactions in Indiana. Ind. Code § 6-2.5-2-1. In addition, a use tax is imposed on the storage, use, or consumption of tangible personal property in the state. Ind. Code § 6-2.5-3-2. There are, however, exemptions to these taxes. Ind. Code § 6-2.5-5-3(b), known as the equipment exemption, states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Additionally, Ind. Admin. Code tit. 45, r. 2.2-5-8(c) states:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

In deciding that the taxpayer was entitled to the equipment exemption, the Indiana Supreme Court in Indiana Department of Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983), found that the equipment used to transport stone from the company's quarry to the crusher and then to stockpiles was directly used in the direct production of tangible personal property. Id. at 524.

The instant case is distinguishable from the situation described in Cave Stone. In Cave Stone, the taxpayer began the production process by blasting and removing stone from its own quarry. The equipment used to move the stone was engaged in the transportation of unfinished work in process, and thus, exempt. Here, the mixing of sand and gravel is not part of the production process. The production process begins with the cement mixer itself. The skid loader is being used to introduce raw materials into the beginning of the production process and is not being used to transport unfinished work in process. The skid loader, as used by the taxpayer in this case, is not a piece of equipment that qualifies for the tax exemption.

FINDING

The taxpayer's protest is denied.

II. Use Tax – Liability of taxpayer for use tax on rolls of stencil material.

DISCUSSION

The taxpayer maintains that the engraving of information on a monument is a manufacturing process and that the purchase of the rolls of stencil material should be exempt from sales or use tax because the material is used in that process. The State of Indiana imposes an excise tax, known as the use tax, "on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." Ind. Code § 6-2.5-3-2(a). The term "use" is defined as "the exercise of any right or power of ownership over tangible personal property." Ind. Code § 6-2.5-3-1(a). The taxpayer purchased the stencil material in a retail transaction and has exercised the right of ownership over it.

There are, however, exemptions to the use tax. Ind. Code § 6-2.5-5-3, known as the equipment exemption, states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Ind. Code § 6-2.5-5-3(b).

Exemptions to sales or use tax are strictly construed against the taxpayer. Indianapolis Fruit Co. v. Department of State Revenue, 691 N.E.2d 1379, 1383 (Ind. Tax Ct. 1998). A taxpayer must engage in production in order to qualify for the exemption. Id. The taxpayer, in this case, is not engaged in a production or manufacturing process when it is engraving information such as names and dates on a monument. It is, instead, providing a service for its customers. Much like the engraving of information on trophies, the taxpayer is providing a service to a specific customer, not goods that would be marketable to a broad segment of society. Significantly, the

service that the taxpayer provides has value only to a specific customer, that is, the one who is ordering a particular engraving, not the general public. The equipment exemption does not apply to the provision of a service by the taxpayer. The taxpayer, therefore, must pay use tax on its purchases of the stencil material.

FINDING

The taxpayer's protest is denied.